IN THE HIGH COURT OF JUDICATURE AT BOMBAY

O.O.C.J.

SUMMONS FOR JUDGMENT NO.515 OF 2006

IN

SUMMARY SUIT NO.1889 OF 2006

...

Kamraj S. Nadar ...Plaintiff

v/s.

Malraj Muttu Nadar ...Defendant

...

Mr.A.P.Mishra for the Plaintiff.

Mr.K.T.Parmar i/b D.H.Shah for the Defendant.

...

CORAM: D.K.DESHMUKH, J.

DATED: 23RD JANUARY,2007

P.C.:

1. This summons for judgment was taken out on

13-11-2006. The returnable date was 18-12-2006. Summons for judgment was not served on the Defendant though the Defendant was represented by lawyer.

2. Only explanation that is given for not effecting service of summons for judgment is that the Defendant was not in Mumbai according to information of the Plaintiff.

3. Firstly, presence of the Defendant in Mumbai was not necessary for the Plaintiff to lodge the papers with the Sheriff for effecting service on the Defendant. Because if the Defendant has a place of business or residence in Mumbai, he can be served there, though he may not be personally present. It was also not necessary for the Plaintiff to serve the summons for judgment on the Defendant, because the Defendant was represented by lawyer and admittedly filed his appearance. There is no explanation to be found in the affidavit filed by the Plaintiff why summons for judgment was not served on the lawyer who was representing the Defendant.

4. The conduct of the Plaintiff shows that the Plaintiff is not diligent in prosecuting his remedy,

therefore he is not entitled to any decree in summary jurisdiction. Summons for judgment is, therefore, disposed of. Defendant is granted unconditional leave to defend the suit. Suit be transferred to commercial cause list. Written statement to be filed within eight weeks.

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